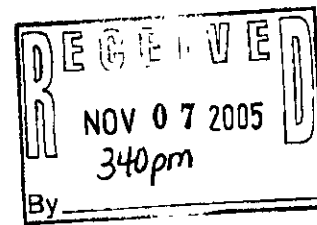


RUSSELL W. SCHRADER  
Senior Vice President  
Assistant General Counsel

November 7, 2005



***By Hand Delivery***

Mr. Robert E. Feldman  
Executive Secretary  
Attn: Comments/Legal ESS  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429

Re: Part 330 — Stored Value Cards

Dear Mr. Feldman:

This comment letter is submitted on behalf of Visa U.S.A. Inc in response to a new proposed rule ("Proposed Rule") issued by the Federal Deposit Insurance Corporation ("FDIC") as a replacement for its April 2004 proposed rule, to clarify when funds at insured depository institutions underlying prepaid cards would constitute "deposits" under the Federal Deposit Insurance Act ("FDIA"). The Proposed Rule could extend deposit insurance coverage broadly to a variety of prepaid products, including payroll cards and gift cards. We appreciate the opportunity to comment on this important matter.

The Visa Payment System, of which Visa U.S.A.<sup>1</sup> is a part, is the largest consumer payment system, and the leading consumer e-commerce payment system, in the world, with more volume than all other major payment cards combined. For calendar year 2004, Visa U.S.A. card purchases exceeded a trillion dollars, with over 450 million Visa cards in circulation. Visa plays a pivotal role in advancing new payment products and technologies, including technology initiatives for protecting sensitive personal information and preventing identity theft and other fraud, for the benefit of Visa's member financial institutions and their hundreds of millions of cardholders.

**SUMMARY OF THE PROPOSED RULE**

As we understand it, the Proposed Rule would apply existing pass-through deposit insurance rules to prepaid cards issued by persons, other than banks, where the funds received from the sale of the cards are placed in a bank. The funds would be considered an insured deposit of the seller of the prepaid card, unless the records of the bank indicate that the funds are held "as agent" for the cardholder and the bank or the seller maintains records that identify the cardholder.

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<sup>1</sup> Visa U.S.A. is a membership organization comprised of U.S. financial institutions licensed to use the Visa service marks in connection with payment systems

In contrast, where a prepaid card is sold directly by the bank, the Proposed Rule appears to contemplate that, for practical purposes, the proceeds of the sale of all such cards would be considered a deposit of the cardholder and, therefore, insured on behalf of that cardholder.

**PROPOSED RULE IGNORES POLICY IMPLICATIONS AND FAILS TO DISTINGUISH BETWEEN DIFFERENT TYPES OF PREPAID CARDS**

Policy Implications Cannot be Ignored.

In the supplemental information accompanying the Proposed Rule, the FDIC acknowledges that prepaid cards are one of the fastest growing products in the financial services industry. The FDIC also acknowledges the potential value of certain prepaid cards in providing a point of entry, especially for many unbanked consumers, into the banking system. We understand that the FDIC has concerns about deposit insurance coverage of the funds underlying prepaid cards when those funds are received or held by a bank. While Visa understands the need to explore and to appropriately determine whether the funds underlying prepaid cards are deposits and the ownership rights of such deposits, we believe it is essential that the FDIC promulgate a final rule that is consistent with the policies and purposes for providing deposit insurance. That is, the purposes for providing deposit insurance are to protect the banking system by reducing the risk of bank runs and to protect depositors' savings and liquid funds.

We believe, nonetheless, that the Proposed Rule ignores the core policy implications of deposit insurance coverage and fails to recognize important differences between different types of prepaid cards. Implicit in these policies is that the depositor is relying on the security of the banking system, including the deposit insurance system, to protect his or her funds.

Distinguish Between Different Types of Products.

Some prepaid products may have characteristics that are consistent with deposit insurance coverage. However, others products are more purely payment instruments that are sold or made available by a bank. The FDIC should focus on the policy reasons for subjecting certain products to deposit insurance. It should not focus, as it has in the Proposed Rule, on the pure mechanics of whether funds are received in exchange for cards and whether that institution maintains records on purchasers or recipients of such payment instruments.

Thus, while it may be appropriate to characterize certain prepaid cards as insured deposits for deposit insurance assessment purposes, we recommend that the FDIC take into account the policy rationale for characterizing the underlying funds contained in certain prepaid products, especially gift cards, as deposits. The structure and design of these products vary widely. Prepaid products include gift cards, payroll/employee cards, single-purpose prepaid cards, electronic benefit transfer cards, telephone cards, health care, travel, and promotional/incentive cards. Moreover, the funding and settlement of prepaid products also vary. Some prepaid products are funded by consumer credit or debit cards or ACH transfers, while other products are funded by companies through a batch process. While some prepaid cards, such as payroll cards, may serve as a practical substitute for traditional

bank accounts, other prepaid cards, such as gift cards and travel cards, are essentially substitutes for gift certificates or uninsured payment instruments, such as non-bank issued traveler's checks.

For example, most gift cards are fundamentally different from bank deposits, even though banks hold the proceeds of both. Gift cards serve as a more flexible substitute for traditional store gift certificates by providing broader transaction capabilities. In turn, gift card transaction capabilities generally are more limited than the capabilities of deposit accounts. For example, in terms of the parties to whom payments can be made, gift card payments generally cannot be made to individuals and cash withdrawals may not be available. Further, the recipients of gift cards frequently do not choose the financial institution issuing the card, nor is the gift card purchased on the assumption that it is backed by the deposit insurance system. Similarly, gift cards are not viewed by either the purchasers or recipients as an investment or savings vehicle.

In many respects, the market has already addressed the deposit insurance issue with respect to payroll cards. Because some state labor laws require that the full amount of an employee's payroll be available to the employee without charge, such a structure would likely lead to payroll cards that may function as a substitute for traditional bank deposits being structured so that these funds would be treated as insured deposits. Furthermore, many employers insist that financial institutions offering payroll cards have to provide holders with deposit insurance coverage. Financial institutions meet this requirement by structuring the payroll card to provide for deposit insurance under existing deposit insurance rules. Further, the Proposed Rule attempts to apply the treatment of historical payment instruments, such as checks, to prepaid cards, even though the legal relationships established between banks and their customers by checks and prepaid cards are different.

#### **WORKABLE PRINCIPLED DISTINCTION**

Although we believe that it is important for any final rule to distinguish between different types of prepaid cards for deposit insurance purposes, we also recognize that the FDIC may wish to make a principled distinction between these products based on their legal structure instead of engaging in case-by-case determinations based on the uses of particular cards. In this regard, we believe that because prepaid cards are in a relatively early stage of development and that the terms of prepaid cards are almost exclusively established by agreements between the card issuers and the cardholders, the FDIC is in a position to establish legal criteria for distinguishing prepaid cards that function as insured deposits and prepaid cards that do not, based on the terms of the card agreements.

Different legal distinctions may lead to similar results that further the purposes of federal deposit insurance while continuing to permit insured banks to compete with non-bank providers of payment services. We believe that the FDIC should work with industry to establish appropriate distinctions between prepaid cards that are treated as insured deposits

and other prepaid cards that are not treated as insured deposits to ensure that the distinctions used are both meaningful and practical, as well as consistent with the definition of "deposit" in the FDIA and the purposes of federal deposit insurance.

#### **RULE SHOULD NOT DISADVANTAGE BANKS**

We believe that the failure to recognize the important attributes of bank issued prepaid cards would potentially result in the issuance of bank prepaid cards only where deposit insurance is important to the purchasers, with the market for other prepaid cards being dominated by non-bank issuers who do not have to bear the high costs of the bank regulatory structure.

For example, under the Proposed Rule, while gift cards sold by a retailer would not be considered deposits of the holder of the card if the funds are not placed on deposit by a bank, gift cards sold at a bank would be considered deposits based on the mere fact that the funds are received by the bank. We believe that the Proposed Rule essentially deems all money received by a bank to be a deposit. This approach is flawed. As part of the business of banking, banks sell and make available to their customers a variety of products and services; the proceeds from such sales, however, are not, and should not be considered, deposits. The same should be true with respect to the sale of gift or other prepaid cards. These funds should not be considered deposits of the bank merely because the cards are sold by the bank.

#### **DISCLOSURES SHOULD BE THE SAME FOR ELECTRONIC AND PAPER PAYMENT INSTRUMENTS**

Finally, we recognize that if some prepaid cards are to be considered insured deposits while others are not, the FDIC may wish to require some sort of disclosure. As part of the Proposed Rule, the FDIC asks whether there should be mandatory disclosures with respect to deposit insurance coverage. Although currently the deposit insurance coverage of paper-based payment instruments is not required to be noted on the instrument or in the agreement for the purchase of the instrument, if the FDIC is concerned about cardholder understanding of whether or not a prepaid card is insured, the FDIC could, where applicable, require a simple notice of deposit insurance in the agreement for prepaid cards; however, any such requirement should be extended to paper-based payment instruments as well.

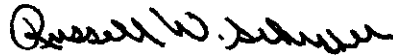
#### **PROPOSED RULE WILL AFFECT THE APPLICABILITY OF OTHER LAWS**

Furthermore, although the FDIC takes the view that the Proposed Rule would not affect the applicability of other laws, such as the Electronic Fund Transfer Act, the USA PATRIOT Act section 326 rules, or reserve requirements to these products, the Proposed Rule, if adopted, will affect the views of other regulators as to the coverage of those requirements. Even if deposit insurance coverage does not automatically trigger coverage under other regulations, such as Regulation E, the fact that the FDIC treats a particular type of prepaid card as a deposit will inevitably affect other regulators' views as to the appropriate coverage of regulations that they administer.

Mr. Robert E. Feldman  
November 7, 2005  
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We appreciate the opportunity to comment on this important matter. If you have any questions concerning these comments or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (415) 932-2178.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell W. Schrader". The signature is written in a cursive, flowing style.

Russell W. Schrader  
Senior Vice President and  
Assistant General Counsel

# FDIC

Federal Deposit Insurance Corporation  
Washington, D.C. 20429

Legal Division

MEMORANDUM TO:           Comment File

FROM:                   Christopher L. Hencke  
                          Counsel

SUBJECT:                Meeting With Representatives of VISA  
                          Regarding Proposed Rule on Stored  
                          Value Cards

On November 7, 2005, representatives of VISA U.S.A. Inc. met with representatives of the FDIC regarding the FDIC's proposed rule on stored value cards and other nontraditional access mechanisms. See 70 Fed. Reg. 45571 (August 8, 2005). VISA was represented by Todd Brockman (Senior Vice President, Prepaid Products), Russell Schrader (Senior Vice President and Assistant General Counsel) and Oliver Ireland (of Morrison & Foerster).

This memorandum summarizes the comments made by the VISA representatives at the meeting. VISA also provided a comment letter (dated November 7), which has been filed with the other public comments on the proposed rule. The comments from the meeting may be summarized as follows:

- The FDIC should not adopt the proposed rule because it does not adequately distinguish among different types of prepaid cards (e.g., payroll cards versus bank-issued gift cards).
- If the funds underlying all types of cards are treated as "deposits," banks will not be able to compete with non-banks in offering these products.
- The contracts underlying some types of prepaid cards are unlike the contracts underlying deposits.

- Some types of prepaid cards are merely payment instruments, similar to uninsured products such as traveler's checks issued by non-banks.
- The holders of some types of prepaid cards do not rely on protection by the FDIC. The purposes of federal deposit insurance are not implicated.
- The FDIC's treatment of funds underlying prepaid cards could influence the application of other laws and regulations, such as Regulation E.
- In regard to the question of consumer disclosures, the FDIC should apply the same rules to both prepaid cards and paper instruments. In some cases, no need may exist for the appropriate disclosures to appear on the card itself.